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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-985]

Xanthan Gum from the People's Republic of China: Notice of Court Decision Not in Harmony with Amended Final Determination in Less Than Fair Value Investigation; Notice of Amended Final Determination Pursuant to Court Decision; Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of Fourth and Fifth Antidumping Duty Administrative Reviews in Part

AGENCY: Enforcement and Compliance, International Trade Administration,
Department of Commerce.

SUMMARY: On September 17, 2018, the United States Court of International Trade (CIT or Court) sustained the Department of Commerce's (Commerce) remand redetermination pertaining to the less-than-fair-value (LTFV) investigation of xanthan gum from the People's Republic of China (China). Because of the CIT's final decision, we are notifying the public that the CIT's decision is not in harmony with Commerce's final determination in the LTFV investigation of xanthan gum from China. Pursuant to the CIT's final judgment, Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) and Shandong Fufeng Fermentation, Co., Ltd. (collectively, Fufeng) are being excluded from the order.

DATES: Applicable September 27, 2018.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0193.

SUPPLEMENTARY INFORMATION:

Background

The litigation in this case relates to Commerce's final determination in the antidumping duty investigation covering xanthan gum from China,¹ which was later amended.² In its *Amended Final Determination and Order*, Commerce reached affirmative determinations for mandatory respondents Fufeng and Deosen Biochemical Ltd. (Deosen).³ CP Kelco U.S. and Fufeng appealed the *Amended Final Determination and Order* to the CIT, and on March 31, 2015, the CIT sustained, in part, and remanded, in part, Commerce's *Final Determination*,⁴ as modified by the *Amended Final Determination*.⁵ Specifically, the Court remanded, for reevaluation, Commerce's conclusion that the Thai Ajinomoto financial statements constituted a better source for calculating surrogate financial ratios than the Thai Fermentation statements, and granted the Government's request for a voluntary remand to reconsider Commerce's allocation of energy consumed at Fufeng's Neimenggu plant between the production of subject and non-subject merchandise.⁶ Pursuant to a series of remand orders issued by the Court that resulted in four remand redeterminations, Commerce adjusted its allocation of energy consumed at Fufeng's Neimenggu plant and revised Fufeng's weighted average dumping margin by using Thai

¹ See *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Final Determination*) and accompanying Issues and Decision Memorandum.

² See *Xanthan Gum from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 43143 (July 19, 2013) (*Amended Final Determination and Order*).

³ *Id.* at 43144.

⁴ See *Final Determination*, 78 FR at 33351.

⁵ See *CP Kelco US, Inc. v. United States*, Slip Op. 15-27, (CIT Mar. 31, 2015) (*CP Kelco I*).

⁶ *Id.* at 2-3, 11-15, 32-34.

Fermentation's financial statements to derive the surrogate financial ratios.⁷ On September 17, 2018, the CIT sustained Commerce's Final Remand Redetermination.⁸

Timken Notice

In its decision in *Timken*,⁹ as clarified by *Diamond Sawblades*,¹⁰ the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's September 17, 2018, final judgment sustaining Commerce's fourth remand redetermination¹¹ constitutes a final decision of the Court that is not in harmony with Commerce's *Amended Final Determination and Order*. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court decision, Commerce is amending the *Final Determination* and *Amended Final Determination and Order* with respect to Fufeng. The revised weighted-average dumping margin for Fufeng for the period October 1, 2011, through March 31, 2012, is as follows:

⁷ *Id.*; see also *CP Kelco US, Inc. v. United States*, Slip Op. 16-36 (CIT Apr. 8, 2016) (*CP Kelco II*); *CP Kelco US, Inc. v. United States*, 211 F. Supp. 3d 1338 (CIT 2017) (*CP Kelco III*); *CP Kelco US, Inc. v. United States*, Slip Op. 18-36 (CIT Apr. 5, 2018) (*CP Kelco IV*).

⁸ See *CP Kelco US, Inc. v. United States*, Slip Op. 18-120 (CIT Sept. 17, 2018) (*CP Kelco V*).

⁹ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹⁰ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹¹ See *CP Kelco V*, at 6; see also *CP Kelco US, Inc. v. United States*, Court No. 13-00288, Slip Op. 18-36 (April 5, 2018), Final Results of Fourth Redetermination Pursuant to Court Order, dated July 5, 2018 (*Fourth Remand Results*).

Exporter	Producer	Weighted-Average Dumping Margin (Percent)
Neimenggu Fufeng Biotechnologies, Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/ Shandong Fufeng Fermentation Co., Ltd.	Neimenggu Fufeng Biotechnologies, Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/ Shandong Fufeng Fermentation Co., Ltd.	0.00

Partial Exclusion from Antidumping Duty Order and Partial Discontinuation of Fourth and Fifth Antidumping Duty Administrative Reviews

Pursuant to section 735(a)(4) of the Act, Commerce “shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act.”¹² Furthermore, and pursuant to section 735(c)(2) of the Act, “the investigation shall be terminated upon publication of that negative determination” and Commerce shall “terminate the suspension of liquidation” and “release any bond or other security, and refund any cash deposit.”¹³ As a result of this amended final determination, in which Commerce has calculated an estimated weighted-average dumping margin of 0.00 percent for Fufeng, Commerce is hereby excluding merchandise from the above producer-exporter combination from the antidumping duty order.¹⁴ Accordingly, Commerce will direct U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits pertaining to any suspended entries from the producer-exporter combination listed above. This exclusion does not apply beyond the producer-exporter combination referenced above.

¹² Section 733(b)(3) of the Act defines *de minimis* dumping margin as “less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.”

¹³ See sections 735(c)(2)(A) and (B) of the Act.

¹⁴ See *Fourth Remand Results*, at 12.

We note, however, pursuant to *Timken*, the suspension of liquidation must continue during the pendency of the appeals process. Thus, we will instruct CBP to suspend liquidation of all unliquidated entries from the producer-exporter combination referenced above at a cash deposit rate of 0.00 percent which are entered, or withdrawn from warehouse, for consumption after September 27, 2018, which is ten days after the CIT's final decision, in accordance with section 516A of the Act.¹⁵ If the CIT's ruling is not appealed, or if appealed and upheld, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate entries subject to the producer-exporter combination rate stated above without regard to antidumping duties. As a result of the exclusion, Commerce (1) is discontinuing the ongoing fourth and fifth administrative reviews, in part, with respect to Fufeng's entries during those periods of review;¹⁶ and (2) will not initiate any new administrative reviews of Fufeng's entries pursuant to the antidumping order.¹⁷

Lastly, we note that, at this time, Commerce remains enjoined by Court order from liquidating entries that: (1) were produced and exported by Fufeng, and were entered, or withdrawn from warehouse, for consumption during the period July 19, 2013, through June 30, 2014; (2) were produced and exported by Fufeng, and were entered, or withdrawn from

¹⁵ See, e.g., *Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review*, 79 FR 78037, 78038 (December 29, 2014) (*Drill Pipe*); *High Pressure Steel Cylinders From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review*, 82 FR 46758, 46760 (October 6, 2017).

¹⁶ See *Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 40229, August 14, 2018; see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 45596 (September 10, 2018).

¹⁷ See *Drill Pipe*, 79 FR at 78038; see also *Certain Steel Nails from the United Arab Emirates: Notice of Court Decision Not in Harmony with the Final Determination and Amended Final Determination of the Less Than Fair Value Investigation*, 80 FR 77316 (December 14, 2015).

warehouse, for consumption during the period July 1, 2014, through June 30, 2015, by East West Technologies Inc.; and (3) were produced and exported by Fufeng, and were entered, or withdrawn from warehouse, for consumption during the period July 1, 2014, through June 30, 2015, by LABH Inc., designated as Entry No. 22703189153, with an entry date of July 7, 2014, and Fufeng's Invoice No. MEU14088. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e) of the Act.

Dated: October 10, 2018.

Gary Taverman,

Deputy Assistant Secretary

*for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.*

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